

EX PARTE OR LATE FILED



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Jay C. Keithley
Vice President
Law & External Affairs

October 14, 1996 **RECEIVED****OCT 15 1996**

Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW -- Room 222
Washington, DC 20554

RE: In the Matter of Federal-State Joint Board on Universal
Service, CC Docket No. 96-45.

Dear Mr. Caton:

On September 11, 1996, representatives of Sprint Corporation, US West and Pacific Bell met with the FCC staff members listed below to discuss the Benchmark Cost Model 2. In the meeting, Sprint was asked it's position on the scope of the FCC's authority under the Telecommunications Act of 1996 to establish the geographic unit for the targeting of Federal universal service report. Attached is a copy of the Ex Parte notice of that meeting (Exhibit 1) and a memo setting out Sprint's position as requested (Exhibit 2).

Sprint asks that this information be made part of the record in this matter. In accord with Section 1.1206(a)(1), two copies of this letter are provided for this purpose. Thank you for your attention to this request.

Sincerely,

Jay C. Keithley

cc: David Krech, CCB
Michael Pryor, CCB
Bob Loube, CCB
Pam Szymczak, CCB
Bill Sharkey, CCB
Anthony Bush, OGC
Doron Fertig, OGC
Glen Brown - US West
Alan Ciamporcero - Pacific Bell

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Warren D. Hannah
Director - Federal Regulatory Relations
Local Telecommunications Division

EX PARTE

September 12, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

RE: In the Matter of Federal-State Joint Board on Universal Service -
CC Docket No. 96-45

Dear Mr. Caton,

On Wednesday, September 11, 1996, representatives of Pacific Bell, Sprint Corporation, and US West, Inc. met with members of the Commission's Common Carrier Bureau's Universal Service Branch to discuss the use of proxy cost models in the above referenced proceeding. Sprint and US West are joint sponsors of the Benchmark Cost Model 2, while Pacific Bell developed the Cost Proxy Model. Both models are intended to illustrate proxy costs of the local exchange telephone network for use in the development of the new explicit universal service fund. The attached information was used during the meeting.

The following members of the Commission's Common Carrier Bureau staff participated in the meeting:

Bob Loube
Pam Szymczak

David Krech
Bill Sharkey

Michael Pryor


Anthony Bush and Doron Fertig of the Commission's Office of General Counsel participated.

Mr. William F. Caton
September 12, 1996
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Glenn Brown represented US West and Alan Ciamporcero and Colin Petheram represented Pacific Bell. Jim Sichter, Larry Millard, and the undersigned represented Sprint Corporation.

Sprint, US West and Pacific Bell request that this information be made a part of the record in this matter. Two copies of this letter, in accordance with Section 1.1206(a)(1), is provided for this purpose. This ex parte notice is filed today due to several conflicting meetings of the undersigned on September 11. If there are any questions, please feel free to call.

Sincerely,



Warren D. Hannah

Attachment

c: Bob Loube David Krech Michael Pryor
Pam Szymczak Doron Fertig Anthony Bush
Bill Sharkey

FCC, Washington, D.C.

Glenn Brown, US West, Washington, D.C.

Alan Ciamporcero, Pacific Bell, Washington, D.C.

Jim Sichter, Sprint, Westwood, KS

Larry Millard, Sprint, Westwood, KS

Jay Keithley, Sprint, Washington, D.C.

**Sprint Corporation
In the Matter of Federal-State Joint Board
on Universal Service
CC Docket No. 96-45**

Sprint strongly believes that the universal service provisions of the Telecommunications Act of 1996 ("1996 Act") -- new Section 254 and amendments to Section 214 of the 1934 Act -- permit, indeed require, the FCC to determine the geographic unit for the targeting of Federal universal service support. This is so notwithstanding the fact that the 1996 Act tasks the states with the responsibility of designating eligible telecommunications carriers ("ETCs"), including defining the Section 214(e) "service area."

The universal service provisions of the 1996 Act require the creation of "Federal universal service support mechanisms" and "a specific timetable for implementation [of rules creating such Federal mechanisms.]" Sections 254(a) and (b). While the states are free to supplement Federal support mechanisms, they may do so only so long as their rules are "not inconsistent with the Commission's rules" and "do not rely on or burden Federal universal service support mechanisms." Section 254(f).

Federal universal service support mechanisms must be "specific, predictable and sufficient," Section 254(b)(5), and must ensure that advanced, quality services are available in all regions of the Nation, particularly to low-income consumers and in "rural, insular, and high cost areas." Sections 254(b)(1)-(3). Federal universal service support must be competitively neutral and can be used "only for the provision, maintenance, and upgrading of facilities and services for which it is intended." Section 254(e). The Commission can not ensure that Federal universal service support mechanisms comply with these statutory directives unless its rules set out the geographic scope in which Federal universal service support is available.

If states alone have that authority, it's very likely -- indeed, virtually a certainty -- that the individual states will differ in their determinations. Thus, one state could adopt study areas, another exchanges, and yet another CBGs. Which definition is adopted will affect who will receive support, the level of Federal support available to the state, and the overall level of the Federal support, that is, the size of the National Universal Service Fund ("National USF").

If the FCC doesn't have the ability to determine the geographic unit for Federal universal service support, it would not be able to size the National USF. Without this ability, the Commission can not determine whether to Federal universal service support mechanisms are specific, predictable and, especially, sufficient. Cf. Section

254(b) (5) .

For instance, if the federal criteria is to subsidize all costs over \$30, the size of the National USF could vary from near zero to over \$7 billion, depending on how the States subsequently decide to define the geographical area for the measurement of costs. Even if the FCC knew these determinations beforehand, States could always change their definition. Thus, the size of the National USF could vary over time depending on State decisions.

Moreover, customers in the individual States would be affected differentially to the extent States defined Federal support areas differently. Customers in high cost areas in States that adopt the study area definition might receive no support (because study area average costs are not "high"), whereas a customer with the same cost of service, but located in a State adopting the CBG definition, could receive substantial support. Such discrimination is certainly not consistent with the intent of the 1996 Act and, in Sprint's view, is flatly inconsistent with the Commission's obligation to ensure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas [] have access to telecommunications services ... that are reasonably comparable to those provided in urban areas ... at rates that are reasonably comparable to rates charged for similar services in urban areas." Section 254(b) (3) .

In sum, the definition of the geographic unit for Federal universal service support purposes is the primary driver of determining the level and adequacy of National USF support. If the FCC has the authority and responsibility to develop and administer a National USF -- which it clearly does -- it must have the authority to determine the geographic unit used for calculating USF. If it lacks that authority -- which clearly is not the case -- it effectively loses control of the National USF and it can not ensure the adequacy of Federal funding, at least in states that adopt geographic criteria that, due to excessive cost averaging, results in insufficient National USF dollars for high cost areas in that state.

Sprint disagrees with those who argue that Section 214(e) permits States to define the geographical scope for targeting Federal universal service support mechanisms. Designation as a Section 214(e) ETC, with the concomitant creation of a Section 214(e) "service area," is, in Sprint's view, a matter of eligibility only. The "serving area" is not explicitly identified as the geographic unit for measuring high cost and nothing in the 1996 Act expressly provides that and ETC must receive Federal universal service support for services throughout the whole of its "service area."

Rather, it is defined as the area wherein with an ETC has the obligation to offer those services designated to be made universally available and to advertise the availability of such services. The definition ensures that any ETC undertakes to make

universally available those services throughout the designated serving area. Without such an obligation, the ETC would have an incentive not to serve particular customers, for example, very high cost customers or customers to which it has not built facilities, yet could still receive universal service funding for the high cost customers it did choose to serve. Thus, the "service area" obligation is intended to provide a level playing field among all ETCs who desire to be eligible for National USF.